

UNITED STATES DISTRICT COURT
FOR THE
WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

* * * * *
DONALD R. SCOTT, et al., * CIVIL NO. 3:10-CV-00024
Plaintiffs, * JANUARY 20, 2011 1:56 P.M.
vs. * MOTION HEARING
* VOLUME I OF I
*
*
GMAC MORTGAGE, LLC., * Before:
* HONORABLE B. WAUGH CRIGLER
Defendant. * UNITED STATES MAGISTRATE JUDGE
* * * * * * WESTERN DISTRICT OF VIRGINIA

APPEARANCES:

For the Plaintiffs: JONATHAN T. WREN, ESQUIRE
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1 (Court convened at 1:56 p.m.)

2 THE COURT: Let the record reflect that this is
3 3:10-CV-24, *Donald R. Scott, et al. v. GMAC Mortgage, LLC*.

4 We are here on the plaintiffs' December 30th motion to
5 compel, and to determine the sufficiency of discovery, and to
6 extend the deadline, the defendant's January 18th opposition.

7 And in the meantime, there was a motion to compel filed
8 by the defense in the case. I don't know where we are with
9 respect to that. I mean today is the 20th. We were notified
10 the other day that the defense thought that the motion to
11 compel had been rendered moot. But apparently additional
12 things were disclosed between then and now, so I don't know
13 what the situation was. And that's what precipitated having
14 the hearing as we had originally scheduled, because I want to
15 make sure where we are, and if we're through with a certain
16 thing, I want to make sure we're through.

17 MR. WREN: Yes, Your Honor.

18 THE COURT: So, Mr. Wren.

19 MR. WREN: Yes. First with regard to the motion to
20 compel that was just filed by the defendant, GMAC, I don't
21 believe that we're prepared to go forward on that today. As
22 you noted, it was filed after business hours two days ago, and
23 so I think that will need to be briefed and --

24 THE COURT: Well, hopefully it can get mooted
25 somehow.

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1 MR. WREN: Okay. We'll do our best.

2 On our motion to compel, I want to first respond to the
3 opposition that was filed by GMAC. When we initially set this
4 case, set this motion for a hearing today, I received
5 information from the Court that if a response was filed, no
6 need to file a reply, just come here and deal with it here.
7 In addition, because it was filed just two days ago, I haven't
8 had an opportunity to reply, but I want to do it now.

9 THE COURT: Right.

10 MR. WREN: The first argument raised by GMAC was that
11 the motion to compel was premature. Rule 37(a)(1) requires a
12 good-faith attempt to confer, not an actual conference, and we
13 believe that the record shows that we've made extensive
14 efforts to resolve these discovery issues. But, in light of
15 the pending discovery cutoff of today, we felt compelled to
16 file the motion to compel when we did if the issues weren't
17 resolved by December 30th, which was the date we filed the
18 motion to compel.

19 We're still in agreement to continue working with
20 Mr. Manning and GMAC to try and get the issues resolved, and
21 we put all that in the motion. We weren't hiding anything
22 from the Court or Mr. Manning with regard to that. And we had
23 a telephone conference on the 3rd of January 2011, and in that
24 we dealt with both GMAC's problems with our discovery
25 responses and vice versa.

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1 Regarding GMAC's discovery to the Scotts, the plaintiffs,
2 we made a number of concessions and agreed to provide
3 supplemental information, and did so promptly, in particular,
4 in enough time for Mr. Manning to have it before the Scotts
5 were deposed on -- I think it was the 13th and 14th of this
6 month, of January.

7 Regarding the Scotts' discovery to GMAC, I sent
8 Mr. Manning a letter the following day, the 4th of January,
9 the day after the telephone conference, detailing specifically
10 what we still needed. We didn't get any response to that
11 prior to the Scotts' deposition on the 13th and 14th, which
12 might have been helpful for -- among other things, Your Honor,
13 GMAC is now attacking the Scotts for not having information at
14 the deposition about specifically what their monetary damages
15 are as a result of the lender paid mortgage insurance
16 burdening their loan. Now, from two days ago, the information
17 that we finally received two days before the discovery cutoff,
18 we have information that we believe establishes that the
19 Scotts suffered somewhere between 40- and \$50,000 over the
20 life of the loan.

21 THE COURT: What you're saying is it assisted you in
22 being able to calculate the damages.

23 MR. WREN: The information is absolutely critical for
24 us to establish the damages. And they turned over some of
25 that now, two days before. We still think there is a lot more

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1 to go to.

2 THE COURT: What I want to know is, is the motion
3 moot, and if not, why?

4 MR. WREN: No, Your Honor, it's not moot. If you
5 want to skip over the premature argument and the procedurally
6 defective argument --

7 THE COURT: Whether it's premature, we're holding a
8 hearing, so that takes care of that.

9 MR. WREN: All right. So what I would propose to do,
10 if we're going to get into what isn't moot, I've taken the
11 liberty to go ahead and taking all of the interrogatories and
12 requests for production of documents that I think still need
13 responses, and putting them in a document, in order with the
14 request and the universe of responses and supplemental
15 responses and our good-faith attempts to get answers, and I
16 would just propose handing that up to the Court and going
17 through them one by one, if that's the way you want to do it.

18 THE COURT: I don't know if it is or not, but you can
19 do whatever you want.

20 MR. WREN: Okay.

21 THE COURT: Have you talked to the defense about
22 this?

23 MR. WREN: What I did was this morning e-mailed him a
24 copy of this. I have another version here.

25 THE COURT: He has probably been on the road.

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1 MR. WREN: He has, and he might not have had an
2 opportunity to look at it, so I have an extra copy for him.

3 So the first one is Donald Scott's Interrogatory Number
4 3, which asks for persons with managerial or supervisory
5 responsibility at GMAC in August of 2007 for policies,
6 procedures, and training.

7 You can see what the exchange has been: initially an
8 objection; no name; and then two days ago, Mary Spencer,
9 regional operations manager.

10 For starters, we need the full name, contact information,
11 current -- whether they're a current employee or not, whether
12 she's represented by Mr. Manning or not, and that sort of
13 information.

14 We also believe it's an incomplete answer in the sense
15 that she is the regional -- identified as the regional
16 operations manager. And in other discovery responses, Karen
17 Morris, who is a major player and originated the loan, is
18 referenced as district manager, and she was on-site. And we
19 believe that she is somebody with managerial or supervisory
20 responsibility at GMAC at the local branch at the relevant
21 time and would be someone who would be identified there.

22 MR. MANNING: Judge, could I interject here? We've
23 just been handed what's a 27-page document, and it appears
24 plaintiffs are proposing to go through these 27 pages. I mean
25 if that's what Your Honor wants to do, I guess we could do

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1 that.

2 THE COURT: They want to read the Constitution into
3 the record.

4 MR. MANNING: This is part of why I believe the
5 motion is premature. All this information is supposed to be
6 identified for the Court and for me prior to a hearing, so
7 that we can get together and talk about it.

8 THE COURT: Well, no. If it's premature, it means
9 that these objections and the motion to compel are premature.
10 If they have continued to ask you for stuff and you've
11 continued to supplement it, and you haven't done it within the
12 period of time that's normally allowed for these things to be
13 done, it's not premature. It's whether you have done it or
14 haven't; and if you haven't, when are you going to be doing
15 it, and, as a result, how much are they owed because you
16 haven't done it?

17 MR. MANNING: Well, I guess the first issue on the
18 prematurity issue under Rule 37, they're saying, "We sent you
19 a letter. We're covered." I believe Rule 37 is intended to
20 require people to actually talk in realtime, whether or not
21 face to face, in a telephone conference, and that never
22 happened.

23 THE COURT: Well, the problem with this case is
24 there's been a lot of talk and no action.

25 MR. MANNING: Well, like the letters show -- and Mr.

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1 Wren just stated --

2 THE COURT: I mean this case hasn't been around just
3 since yesterday.

4 MR. MANNING: The letters reflect that we had
5 proposed to talk on January 3rd. And this motion, without
6 identifying what was deficient, was filed before that day.
7 And I haven't had the opportunity to look at what has just
8 been handed to the Court of 27 pages of materials. So what I
9 would propose -- I believe I'm entitled to look through this
10 and respond if there's law in opposition to what they're
11 demanding, to narrow the scope of what is this alleged
12 deficiency.

13 I've proposed prior to today, I believe this was in a
14 letter last week to opposing counsel, look, let's just
15 postpone it for two weeks, give us the opportunity -- you can
16 have another two weeks to do the depositions, which they've
17 made no attempt to schedule at this point, of the witnesses
18 that they believe they need.

19 We've submitted declarations, we've submitted a ton of
20 information, which I can hand up to Your Honor, if that's what
21 we're going to do today, is hand up a bunch of materials. I
22 can show you what we supplemented last week. I just think
23 that it's better suited under the rules and for the Court's
24 time for us to talk. I'm happy to deal with it, Judge, in
25 chambers. But I believe I'm entitled to prepare a defense and

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1 know what they're saying is deficient. Today, for the first
2 time at this hearing, is what they've identified is deficient.

3 THE COURT: I really didn't schedule this to go
4 through a line-by-line thing, because I thought surely y'all
5 would be able to know what's still missing, be able to
6 determine it and come to the Court and say, "This still hasn't
7 been done," and I would say, "Do it," and you could --

8 MR. WREN: Your Honor, if I may, it is a 27-page
9 document, but it is everything that has taken place between
10 the parties. The suggestion that they don't know what the
11 issues are is somewhat crazy.

12 There was a universe of interrogatories and requests for
13 production of documents, but we thought we got defective
14 answers. We sent a 13-page, very detailed letter of the
15 reasons why we thought the responses were insufficient. We
16 followed that up with a two-page letter when we gained more
17 information from Yvonne Wolert, before she became represented
18 by Mr. Manning, finding more information of what we needed.
19 We then had the meet-and-confer over the phone, and the next
20 day I sent, "These are the things that you're agreeing to
21 supplement" --

22 THE COURT: Let me just take an example.

23 MR. WREN: Okay.

24 THE COURT: There's a claim in this case for punitive
25 damages, right?

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1 MR. WREN: Yes.

2 THE COURT: And ordinarily what is done is that in
3 lieu of all the discovery about the assets of a company, net
4 worth statements are ordered by the Court. So here's
5 Interrogatory 30: State GMAC's net worth for the years 2007
6 through 2010.

7 Now, is the punitive damage claim still in the case?

8 MR. WREN: Yes, Your Honor.

9 MR. MANNING: The Court has taken under advisement
10 the motion to bifurcate.

11 THE COURT: But that isn't my question. Is it still
12 in the case? It hasn't been dismissed?

13 MR. MANNING: It has not been dismissed, Judge.

14 THE COURT: Then I don't understand the overly broad.
15 It's not overly broad because the jury has the right to see
16 the before, during, and after status of a company. I just
17 can't believe that. Now, it certainly reveals a lot of
18 things, and most of the time this information is kept
19 confidential until and unless it's necessary for trial. But,
20 you see, there's just this blanket objection: irrelevant.
21 There's no foundation for irrelevance.

22 MR. MANNING: Judge, the foundation for irrelevance
23 is there's a motion to bifurcate that's currently pending
24 before the court. The Court has stated that upon ruling for
25 summary judgment they would decide whether or not we need to

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1 go forward with that kind of information. Until that's ruled
2 upon, it is irrelevant.

3 And second, in terms of the scope of it, the relevancy is
4 potentially 2007, in the event that there is a finding of
5 liability for punitive damages by the jury, at which point we
6 would then proceed to damages, typically the case law reflects
7 that, you know, shortly before trial, whether it's two weeks
8 or 30 days, under seal to the Court net worth for a particular
9 year is submitted, not a range of years.

10 THE COURT: See, you didn't say that. You didn't
11 say, "We have it assembled, it's ready to go, and we will
12 deliver it under terms and conditions that the Court will
13 impose." You didn't do that.

14 MR. MANNING: Well, that's because of the motion to
15 bifurcate, Judge.

16 THE COURT: You just said the request is overly
17 broad, it's irrelevant. And it's not. As long as the claim
18 is there, I mean we can deal with it. It just seems to me --
19 I feel like every time I look at one of these questions and
20 answers, I feel like I'm picking up a stone wall; I really do.
21 And I'm just being honest. I'm not accusing anybody. It just
22 has a feeling of it.

23 MR. MANNING: And what we've proposed, Judge, just so
24 you know how we've tried to resolve it, is we've said, "Look,
25 we can submit this to you two weeks before trial, under seal,

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1 if you agree to submit your attorney's fees information,"
2 which is the subject of our motion to compel, and they've
3 refused. So it's not that there's a lack of effort to try to
4 resolve this. And I believe it's better resolved all
5 together --

6 THE COURT: Well, attorney's fees are not going to be
7 fixed by a jury.

8 MR. MANNING: Well, under fraud, it's an element of
9 damages, and it would have to be proven by --

10 THE COURT: Then you could put them on terms about
11 whether they're going to introduce that as an element of
12 damages under fraud.

13 MR. MANNING: It's required by law. It's not their
14 choice as to whether they're going to -- they're seeking
15 damages of attorney's fees under the fraud claim. If they're
16 going to waive their claims to attorney fees under fraud,
17 fine.

18 THE COURT: I understand.

19 MR. MANNING: But that's not what they've done now.

20 THE COURT: Now we're arguing a motion that's not
21 before the Court, and that is premature.

22 MR. MANNING: Your Honor, we're arguing the next
23 motion, and we disagree.

24 THE COURT: Good try, though.

25 MR. MANNING: I believe, Judge, that it would be

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1 better suited for us to try to just talk. I'm here, we're
2 face to face --

3 THE COURT: Here's the problem I'm facing: Y'all go
4 do that, but the problem is, it's taken this to get us to this
5 point, and there's no excuse for that. The plaintiff has
6 asked, the plaintiff moved, nothing was done, nothing --
7 things were forthcoming, but it's dribbled in and it's
8 dribbled out, and I want to fix a drop-dead date that the
9 answers to these are as complete as they're going to get. And
10 if there are no answers to them, then they can use those no
11 answers however they want to, to say you don't have any
12 evidence. But I know you've got evidence on some of them.

13 And when they ask for an interest rate and you give them
14 a whole bunch of other stuff other than an interest rate, I
15 don't understand it to be honest. And I'm not fussing with
16 you. I don't understand why a simple question can't get a
17 simple answer.

18 So, you know, I'm not going to go through all of these,
19 but I will say that, for the plaintiffs' time, if there's
20 further answers that need to be provided, I'm going to award
21 them attorneys fees for coming here, because this is what's
22 precipitated it.

23 And I know that there are legal issues in the case, I
24 know that it hasn't helped that some of those are still
25 outstanding on motions to dismiss or to bifurcate or whatever,

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1 and I know that that complicates things, but it does not keep
2 us from moving forward. And, you know, my problem is, until
3 and unless those claims are gone, they're in the case. I mean
4 that's been sort of a traditional approach we've taken, and
5 you do something to preserve the evidence.

6 MR. WREN: One of the potential problems, because
7 we're nearing the trial, today is the discovery cutoff day, we
8 had not scheduled depositions.

9 THE COURT: That's a problem.

10 MR. WREN: Our position is that we can't -- this is a
11 document-intensive case. We can't go forward with depositions
12 of witnesses without having some of this documentation. For
13 example, Karen Morris, who I mentioned before, was the loan
14 officer and is a key player. We got two days ago a
15 declaration from her. And she is represented, as is Yvonne
16 Wolert, as is Julie Martin, all three loan officers, by
17 Mr. Manning and his firm, with strict instructions for us not
18 to talk to them, even though, for example, Ms. Wolert told me
19 that she wouldn't agree to him representing her. But then he
20 said he did represent her, so I don't know what to do.

21 But the point of it is, we got the declaration from
22 Ms. Morris two days ago, and that declaration attaches, you
23 know, rate sheets and a summary document, and the rate sheets
24 are incomplete. It's two pages out of 19, on their face, and
25 they are, you know, almost indecipherable for an expert. And

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1 it puts us at a significant disadvantage to be taking the
2 deposition of somebody with 30 years of experience in the
3 mortgage industry, who is testifying from rate sheets from
4 three years ago, when we're presented with those at the
5 proceeding. And it's not efficient --

6 THE COURT: Well, I'm going to tell you what Judge
7 Urbanski just did in similar circumstances. He said, I'm
8 going to withhold the decision on whether sanctions are going
9 to be imposed until and unless you-all get this thing
10 straightened out. If you can't get it straightened out, then
11 I'm going to have a full-blown hearing of what the problem
12 was, the whole history, if it takes all day. And if I find
13 that GMAC has withheld evidence, there are going to be
14 sanctions, including the possibility of having some of their
15 evidence prevented from being introduced.

16 I'm not reflecting on counsel. It's a terrible mess. I
17 don't like where it is on the last day of discovery. It
18 shouldn't be here.

19 MR. MANNING: And, Judge, part of the issue here is
20 these three individuals are all former employees. Again, it
21 all gets back to what Your Honor has already identified as
22 pending issues, one of which is this case is stale; it was
23 brought so late by the plaintiffs that, you know, we're
24 talking about a closed office and people that are former
25 employees.

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1 THE COURT: Yeah, but if they're former employees,
2 there's all those ethical rules dealing with who can tell them
3 to do what, where, and who represents them. Unless they are
4 in the control group, they're out of your control to some
5 extent. So they have to be in a control group, essentially,
6 before you can tell them what to do. I mean that's my take.
7 I may be wrong. Y'all are much brighter than I.

8 One of the reasons I wanted everybody to show up is
9 here's what I'm going to find: I'm going to find that the
10 motion is not moot, that the discovery requests have not been
11 answered, or they've been answered in ways where objections
12 have been voiced or put forth that really are not sustainable
13 in some form. Now, I'm not saying every one of them is,
14 because just like you, Mr. Manning, I have not read them
15 because I just got them.

16 But y'all need to do this -- and, of course, the
17 depositions of the individuals that haven't been taken, I mean
18 I can't entertain a motion to extend the time for those to be
19 taken, but I'm going to find out whose fault it is that the
20 basis for information that's necessary to take their
21 deposition and defend it has or has not been produced.

22 MR. WREN: Okay. So what the plaintiffs would
23 propose, which is something we proposed in a letter to
24 Mr. Manning sometime ago, is an extension of our ability to
25 take -- plaintiffs' ability to take depositions until the end

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1 of February, discovery depositions.

2 THE COURT: When is summary judgment due?

3 MR. MANNING: Well, we filed a summary judgment
4 motion; the defendant hasn't filed one. The deadline is 75
5 days before trial.

6 MR. WREN: It's March 4th.

7 THE COURT: March 4th.

8 MR. MANNING: I'm sorry, March 4th is the hearing
9 date. The dispositive motions have to be filed on
10 February 4th. So if we're going to move that --

11 THE COURT: The clock is ticking.

12 MR. MANNING: What I proposed is two weeks for
13 depositions, two weeks added on for the dispositive motions,
14 two weeks on the hearing, you keep the trial date the same.

15 THE COURT: I can't do that without consent of the
16 court.

17 MR. WREN: In two weeks -- we don't have the
18 documents today, so extending the deposition deadline two
19 weeks from today is no relief at all.

20 THE COURT: Maybe I just need to get a hearing date
21 for you to bring evidence to determine why and under what
22 circumstances information was not produced and why it wasn't
23 produced, and I'll have to find fault. I can tell you, if I
24 find fault, somebody is going to be deprived of something, the
25 least of which will be money.

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1 And, you know, I don't think it's right to stand on
2 objections and force a motion to compel near the end of
3 discovery on some things that are just so clearly and easily
4 answerable. And to have them dribble in several days before
5 the close of discovery is not kosher.

6 Now, I don't know whether it's the client or counsel or a
7 combination. I don't want to find fault, because the lawyers
8 in this case are exceptionally good lawyers and I respect
9 them, but something is not going right.

10 Now, I can't extend any discovery along those lines,
11 Mr. Manning, unless I get permission from the district judge
12 to do that, because they're the ones on the back end that have
13 to read and research and be prepared for the motions for
14 summary judgment.

15 MR. MANNING: I believe that Mr. Wren and I could
16 talk about it, proposing a joint motion to extend. We really
17 don't want to postpone the trial date because our position
18 is there's been excessive written discovery here.

19 THE COURT: There's no reason for you to, because
20 they don't have information they need.

21 MR. MANNING: Well, I understand that that's their
22 position, but our position is there's excessive, harassing,
23 written discovery unnecessarily to try to drive up the costs
24 and avoid taking depositions, which are available. The
25 witnesses are available.

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1 THE COURT: Well, I'm not going to permit that
2 either. If it's within my power, under the circumstances, the
3 depositions will be taken. But I'm going to tell you, they
4 are entitled to have information upon which they can validly
5 examine the witnesses against them.

6 MR. MANNING: I understand that, and I agree, Your
7 Honor. There's been 176 requests for admissions served on my
8 client on a small residential loan case. It's just excessive.
9 And I understand that they're painting a picture that we're
10 withholding --

11 THE COURT: That's because you practiced after the
12 rules came into effect. Before the rules came into effect,
13 requests for admission were all over the place and later
14 denied. That was discovery.

15 Okay. Y'all meet. I'm not going to be around very late
16 this afternoon because I've got another place to go, but
17 something is going to have to get done, and in the meantime,
18 we can communicate.

19 Is Judge Moon around? He was here today, wasn't he? So
20 he hasn't gone on vacation.

21 MR. WREN: Your Honor, I'm not sure what we're
22 talking about exactly, but with regard to summary judgment,
23 extension of summary judgment, we filed our ours, it's ready
24 to go, it's been set for a hearing. It's after the date --

25 THE COURT: Is that the March 4th? No.

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1 MR. WREN: It's set for March 18th, I think it is.
2 It's set. It's done.

3 THE COURT: So are there two sets of summary judgment
4 motions?

5 MR. MANNING: There will be.

6 MR. WREN: There are no summary judgment motions from
7 GMAC.

8 THE COURT: But the time period for filing them has
9 not expired?

10 MR. MANNING: That's right.

11 MR. WREN: That's right. And I don't know why there
12 would need to be an extension of a filing date deadline for
13 summary judgment motions by GMAC when they've conducted their
14 discovery. We've given them the information they requested.
15 We've met, we gave them what they wanted, they deposed our
16 clients, we asked them who else they want to depose, they said
17 the expert.

18 THE COURT: I think he's got a point.

19 MR. MANNING: The expert. We're entitled to depose
20 his expert.

21 THE COURT: Well, if y'all dragged your feet in
22 discovery to drag this to the end -- did y'all agree to take
23 expert depositions after the discovery date had closed?

24 MR. MANNING: No.

25 THE COURT: Are you claiming that the plaintiffs have

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1 done anything to keep you from taking the deposition until
2 then?

3 MR. MANNING: Well, we didn't receive their
4 supplemental discovery until last week. And we have submitted
5 a brief in opposition to the summary judgment on the basis
6 that they have withheld evidence that we needed to take the
7 depositions of the plaintiffs. They've since supplemented and
8 we did take the depositions of the plaintiffs, but I just want
9 the Court to have the benefit of the full scope. The
10 accusations that they're making are pointing back at
11 themselves.

12 THE COURT: What if I say no more discovery, what
13 happens?

14 MR. WREN: We would be severely disadvantaged. We
15 don't know what the evidence is; we don't know what it is
16 until we get it. Our expert is trying to figure out what the
17 rate would be if they had gone in -- our fraud case is, Your
18 Honor, our evidence is going to be that the Scotts were in a
19 situation where they didn't need mortgage insurance. They had
20 received communications from GMAC that they were at that
21 point. They went to Karen Morris and asked for a loan that
22 didn't have mortgage insurance. Our evidence will be that
23 they were told they could get a loan without mortgage
24 insurance.

25 THE COURT: I know. I remember.

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1 MR. WREN: Okay. But instead, they were given a loan
2 with 10,000 extra dollars that they wouldn't have agreed to if
3 they had known the consequences of that. GMAC is going to say
4 they did know, we say they didn't know, okay, and that's the
5 issue.

6 But if we prevail on the fraud, one of our damages is
7 that we're put back in the position we would have been. What
8 would the plaintiffs have gotten if they had gotten what they
9 were told they were going to get? And we need to know, you
10 pointed out, the interest rate.

11 THE COURT: I was just reading a question.

12 MR. WREN: Right. But that's why we asked that
13 question. And so part of our damages evidence from our expert
14 is: What is that number? How do we arrive at that number?
15 And he is doing the best he can to back into it with the drips
16 and drabs and little bits of information that we got. But it
17 is within GMAC's control to look at the documents and say,
18 "This was the rate. This is the rate. This is what we would
19 have given to them." We don't have that. We think we can put
20 on our evidence and do the best we can, but their refusal to
21 provide --

22 THE COURT: Well, just keep in mind there's a wide
23 range of sanctions that can be imposed, including preventing a
24 party from examining a witness about issues that the
25 information to provide the answer would have come from the

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1 examining party. I mean there are all of those ranges,
2 because we're not talking about death penalties here, we're
3 just talking about where the problem lies, whose fault it is,
4 and I don't know.

5 MR. MANNING: Judge, I can hand up to you the
6 declaration of Karen Morris, so you can see how detailed it
7 is. She is prepared --

8 THE COURT: He said there's a listing of pages that
9 seem to be partial.

10 MR. MANNING: What's been produced are the relevant
11 rate sheets, which has meaning. There's a specific type of
12 loan. There's an LPMI loan and there's a home equity line
13 that would have been compared to it. We produced all those
14 rate sheets.

15 THE COURT: Those are comparable rate sheets?

16 MR. MANNING: They have them all. The explanation,
17 "You're making our job hard," well, you know, you have to
18 prove your case. We've produced the information.

19 Our position is there's no damages. And they're saying,
20 "Tell us what the damages are." Judge, our position is, based
21 on all the variables, they got the best loan available to
22 them. There is no harm here. We've produced the supporting
23 documents now. To the extent their expert is having
24 difficulty, it's because there's no damages.

25 THE COURT: Well, I've never known it to be a defense

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1 to a fraud case, "Well, they got a good deal, so why are they
2 complaining?" because if there was fraud, there was fraud
3 whether they got a good deal or not.

4 MR. MANNING: Yeah, separate issues, I agree. We're
5 talking about the damages portion.

6 THE COURT: Well, I guess.

7 Well, I'll try to get ahold of Judge Moon and see where
8 he stands. Y'all sit here and see what you can come up with,
9 because I really think, Mr. Manning, the burden is on you
10 right now to satisfy them before I have to determine whether
11 their dissatisfaction is unreasonable.

12 And I don't mean to put any more burden than necessary,
13 but I don't think y'all want this going to a full-blown
14 hearing to determine whether you have or haven't, because it's
15 going to cost everybody money, and in the end, somebody is
16 going to pay for it, including risking sanctions dealing with
17 how you present evidence.

18 So y'all meet and see what you can agree to. I'm going
19 to make a phone call. I've got a 2:30 criminal matter and
20 then we'll see what happens after that.

21 MR. MANNING: Should we clear the tables, Your Honor?

22 THE COURT: That would be nice.

23 Can you go down and put them in a conference room near
24 the clerk's office? That gives them room.

25 MR. WREN: Thank you, Judge.

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THE COURT: Thank you.

(Court recessed at 2:25 p.m.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above entitled matter.

/s/ Judy K. Webb

Date: 3/11/2011